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IN THE

Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

No. 455

AMERICAN AIRLINES, INC.,

Petitioner,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

SUPPLEMENTAL JOINT APPENDIX

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Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
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212 LO 5-4424

ARTHUR M. WISEHART
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American Airlines, Inc.
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Appendix A

Letter to A. P. A. and F. E. I. A.

Mr. Nicholas J. O'Connell
President
Allied Pilots Association
405 Lexington Avenue
New York, New York 10017

Mr. William A. Gill, Jr.
President
Flight Engineers' International Association
100 Indiana Avenue, N.W.
Washington, D. C. 20001

Gentlemen:

The following statement is made subject to and effective with the signing of a formal and final agreement by and between the Carrier and the two labor organizations mentioned below, respectively.

The terms and provisions of the Tripartite Agreement dated October 17, 1964, between the Allied Pilots Association, the Flight Engineers' International Association, AAL Chapter, and American Airlines, pertaining to the performance of the flight engineering function on American Airlines, were negotiated and subsequently agreed upon in mediation pursuant to Section 5, First, of the Railway Labor Act.

Those provisions of the said Tripartite Agreement relating to bargaining and the performance of the representation function terminated a long-standing dispute of substantial impact on the airline industry and the public in a manner considered equitable, reasonable, and in full consideration of the respective contentions of the respective parties.

Appendix A

The execution and implementation of the Tripartite Agreement is not meant to and shall not cause either labor organization to suffer an increased risk of loss of representation rights.

Sincerely yours,

W. Willard Wirtz
Secretary, U. S. Department of Labor

Date: March 8, 1965

Howard G. Gamser
Chairman, National Mediation Board

Date: March 10, 1965

Appendix B

Tripartite Agreement

1. Pursuant to the certification from the National Mediation Board, the Company and the Allied Pilots Association recognize the AAL Chapter, FEIA, AFL-CIO, as the duly designated exclusive bargaining representative of the third crew members listed on the American Airlines Flight Engineer System Seniority List set forth in Appendix A attached hereto who are assigned to and serve at the third crew member position on all aircraft operated by the Company with a minimum cockpit flight crew of three or more (hereinafter referred to as "Flight Engineers"). The Flight Engineers will be covered by the Basic Agreement between the Chapter and the Company.

2. The Company and the AAL Chapter, FEIA, AFL-CIO, recognize the Allied Pilots Association, as the duly designated exclusive bargaining representative of all third crew members who are assigned to and serve at the third crew member position on all aircraft operated by the Company with a minimum cockpit flight crew of three or more other than the third crew members referred to above as Flight Engineers. The Flight Officers will be covered by the Basic Agreement between the Allied Pilots Association and the Company.

3. All cockpit crew members hired by the Company on or after July 1, 1964, shall meet the Company's employment requirements for the hiring of Pilots, and shall be represented by the Allied Pilots Association and covered by the Basic Agreement between the Allied Pilots Association and the Company.

4. No party to this Agreement shall seek in any manner to remove from the Federal Aviation Regulations the

requirement that a Flight Engineer certificate be possessed by one cockpit flight crew member in turbojet or turboprop aircraft, nor add to the Federal Aviation Regulations any requirement that will jeopardize the job security of any Flight Engineer, but the parties reserve the right to express their individual views to the Federal Aviation Agency with respect to proposed rule-making aimed at substituting criteria other than gross weight as the basis for determining crew requirements for aircraft to be certificated in the future.

5. (a) Each Flight Engineer shall be deemed qualified for the third crew member position as long as he satisfies the minimum government requirements for such position. Should governmental regulations change to impose additional requirements for the third crew member position on any aircraft, the necessary additional training therefor will be provided, on Company time and at Company expense, for the Flight Engineer, if such position remains primarily a flight engineering function, as it is generally known. If a change in qualifications by any governmental agency causes or threatens to cause Flight Engineers to lose employment as third crew members, the consequences of such change to such Flight Engineers shall be equitably resolved in accordance with procedures set forth in Section 8 of this Agreement.

(b) Flight Engineers shall accept such additional training relating to the proper performance of the third crew member function as the Company may require, on Company time and at Company expense.

6. Each Flight Engineer shall have priority and seniority over all Pilots (including Flight Officers) for the third crew member position on any type of aircraft operated by the Company for which such Flight Engineer meets the minimum government requirements for the third crew member position pursuant to Section 5 above. No Flight Engineer shall be furloughed or continued on forlough while any Pilot (including Flight Officer) is serving as third crew member on any type of aircraft operated by the Company for which such Flight Engineer meets the minimum government requirements for the third crew member position. Flight Engineers shall be eligible for the rights herein provided until retirement, resignation, severance, or discharge for cause and, if furlough and recall of Flight Engineers should become necessary at any time after the execution of this Agreement, the rights herein shall survive such furlough and recall. If a Flight Engineer does not chose to exercise his seniority to assert such priority in any particular instance, he may not subsequently invoke this Section to assert priority as to the particular instance in which he did not exercise his seniority.

7. The agreement to guarantee Flight Engineers the prior rights as defined in Section 6 above shall be made directly with and on behalf of each individual Flight Engineer because of his past service with the Company, to be legally enforceable by him pursuant to the provisions of Section 8 hereof, and shall be in the form attached as Appendix B to the original executed copy hereof, and shall be given to each Flight Engineer.

8. Any dispute, claim or grievance arising out of or relating to the interpretation or application of this Agreement shall be resolved pursuant to Section 204 of the Railway Labor Act as follows:

(a) Any party to or person bound by this Agreement may serve a written notice of protest, within thirty days

after the date of becoming aware of the action protested, on each member of the Tripartite Board of Adjustment hereinafter established.

(b) The Tripartite Board of Adjustment shall consist of the President of the Allied Pilots Association, the President of the AAL Chapter, Flight Engineers International Association, and the Vice President-Flight of the Company. An alternate designated by any one of the foregoing Board members may serve in his stead. A unanimous decision by the three-member Board will be final and binding on all parties. If the decision is not unanimous, the matter may be appealed to the neutral referee as provided below.

(c) If the Tripartite Board of Adjustment fails to render a unanimous decision within thirty days after receipt of the protest, or a vacancy exists on the Board, the petitioner may cause the matter to be referred to Harry H. Platt, Esq., as neutral referee or, in the event of his inability to serve, Peter M. Kelliher, Esq., as his alternate, by serving a notice thereof on each of the Board members and the neutral referee within forty days after the protest was originally received by the Board. The decision of the neutral referee shall constitute the determination of the Tripartite Board of Adjustment. The other members of the Tripartite Board of Adjustment shall advise the neutral referee, and shall provide the neutral referee with information and assistance as required by him, but they shall not vote on the decision. The absence of one or more such Board members, other than the neutral referee, shall in no way affect the validity or enforceability of the decision of the neutral referee. If the neutral referee is unable to serve, his successor shall be chosen pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association.

(d) The decision of the neutral referee shall be in writing and signed, and shall be deemed an arbitration award which is final and binding on the parties.

(e) The expenses of the proceedings, including the compensation of the neutral referee, shall be shared equally by each of the parties to this Agreement, and the proceedings shall be conducted pursuant to procedures established by the neutral referee.

(f) The Tripartite Board of Adjustment shall not have jurisdiction to interpret the working agreements of the parties. Any dispute arising under this Agreement which requires interpretation of the working agreements shall be promptly referred by the neutral referee to the appropriate System Board of Adjustment, and the System Board of Adjustment shall issue its interpretation within sixty days after the matter has been referred to it, or as soon thereafter as possible. Thereafter, on the basis of such interpretation by the System Board of Adjustment, the Tripartite Board of Adjustment shall take whatever, if any, further action may be necessary to give effect to the terms of this Tripartite Agreement.

(g) The procedures prescribed in this Section 8 shall be exclusive and any claims not processed in accordance with them shall be deemed to be waived.

9. (a) After each new Pilot Agreement is settled in the future, upon the same effective dates, changes in the rules and working conditions applicable to Flight Officers thereunder shall also become applicable to Flight Engineers, as appropriate, except that (i) Flight Engineer training will be governed exclusively by Section 5 of this Tripartite Agreement, (ii) Flight Engineers shall not acquire or accrue seniority as Pilots, (iii) Flight Engineers

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shall not be covered thereby in the American Airlines Pilot Retirement Benefit Plan but shall be covered in the American Airlines Retirement Benefit Plan for Flight Engineers effective January 1, 1965, and the American Airlines Supplemental Variable Annuity Plan effective January 1, 1965,* (iv) the allocation of Flight Engineer cockpit duties shall be determined by the Company, (v) there shall be a Flight Engineer grievance procedure and System Board of Adjustment, as set forth in Appendix C attached hereto and a part hereof and (vi) Appendix D attached hereto and a part hereof is a memorandum agreement between the AAL Chapter, FEIA, and the Allied Pilots Association with respect to payments for services rendered.

(b) The Flight Engineers shall not engage in any strikes, work stoppages, slowdowns, curtailment of work, or other concerted action, while this Agreement remains in effect, and any disputes, if not otherwise resolved, shall be submitted by either party to the Tripartite Board of Adjustment for a final and binding determination pursuant to Section 8 hereof.

10. Effective January 1, 1965, the rates of pay for Flight Engineers shall be based on 90 percent of present copilot pay. On and after January 1, 1966, the Flight Engineers will receive (i) the rates of pay for Flight Officers or (ii) rates of pay based on 90 percent of copilot pay, whichever is higher. Flight Engineer rate changes shall take place as of the same effective dates in each new future Pilot agreement covering rates of pay, except that the January 1, 1965 Flight Engineer rates shall remain unchanged through December 31, 1965.

* The AAL Chapter FEIA and the Company may make changes in retirement benefits applicable to Flight Engineers by mutual consent, but discussions of such changes shall not be deemed an exception to the waiver provisions of Section 12(a) of this Agreement.

Appendix B

11. The provisions of this Agreement shall prevail over inconsistent provisions in any other agreement and neither the Tripartite Board nor any Adjustment Board shall have jurisdiction to change the provisions of this Agreement. The terms of this Agreement shall be for the benefit of and binding upon the parties, their successors or assigns, and the individual Flight Engineers and Pilots now or in the future employed by the Company.

12. (a) This Agreement shall remain in effect so long as any Flight Engineer remains in the active employ of the Company as a flight crew member or retains recall rights. The parties hereto, as well as the persons bound hereby, irrevocably waive the right to serve any Section 6 notice, under the Railway Labor Act, of an intended change which, if adopted, would have the effect of modifying provisions contained in this Agreement or otherwise to require bargaining as to such provisions, provided, however, (i) that this Agreement may be changed by unanimous agreement among the parties and a majority of the Flight Engineers then performing services as such, and (ii) that Appendix C and Appendix D hereof may be changed by mutual agreement of the parties.

(b) This Agreement is a permanent resolution of a long-standing problem. Neither the Company, the Allied Pilots Association, the AAL Chapter, Flight Engineers International Association, AFL-CIO, their successors, assigns or affiliates, nor any individual Flight Engineer or Pilot (including Flight Officers), now or in the future employed by the Company, shall challenge, contest, or question the legality, validity, or enforceability of this Agreement, or any provision thereof, in any judicial, administrative, or other proceeding, and each of the parties shall participate in defending the legality, validity, and enforceability of

this Agreement in any judicial, administrative, or other proceeding involving any of its provisions.

IN WITNESS WHEREOF, the parties have set forth their signatures hereunto as of this 11th day of December, 1964.

For the AAL Chapter, Flight Engineers International Association, AFL-CIO.

/s/ Joseph D. Manning

For the Allied Pilots Association

/s/ Nicholas J. O'Connell, Jr.

For American Airlines, Inc.

/s/ A. Di Pasquale

Appendix A Annexed to Agreement

ORIGINAL CONTAINS LIST OF NAMES WHICH IS OMITTED HEREIN

Appendix B Annexed to Agreement

December 11, 1964

Dear Flight Engineer:

In consideration of your past services with American Airlines, and of your acceptance of the rights and obligations set forth in the Tripartite Agreement annexed hereto, the undersigned parties to that Agreement agree and represent to you that the terms and conditions thereof are binding upon them, their successors and assigns, are made with you and for your benefit as an individual Flight Engineer in the employ of American Airlines, and will remain in effect so long as you remain in the active employ of American Airlines as a Flight Crew Member or retain recall rights.

In the event that you have any dispute, claim or grievance arising out of or relating to the interpretation or application of the aforesaid Agreement, you are entitled to have such dispute, claim or grievance resolved by a written protest filed within thirty days after the date you became aware of the action protested. Your dispute, claim or grievance will be processed in accordance with the terms and conditions prescribed in Section 8 of the aforesaid Agreement.

The aforesaid Agreement is subject to change and the provisions thereof to modification only by the unanimous agreement of the undersigned parties and a majority of the Flight Engineers then in the active employ of the

Appendix B Annexed to Agreement

Company as a flight crew member or who retain recall rights.

Very truly yours,

AMERICAN AIRLINES, INC.

By:

ALLIED PILOTS ASSOCIATION

By:

AMERICAN AIRLINES CHAPTER,
FLIGHT ENGINEERS' INTERNATIONAL
ASSOCIATION, AFL-CIO

By:

Appendix C Annexed to Agreement

There is no difference between the parties with reference to the procedure and handling of flight engineer grievances below the System Board level. The parties agree to the following subsequent procedure applicable to flight engineer grievances:

(a) The flight engineers grievances in the categories hereinafter set forth shall be processed through the Flight Engineers System Board of Adjustment in the usual way:

(i) Grievances and cmf shr cmfw vbg c cmfwy ity of flight engineers among themselves insofar as such seniority may derive from the formulation of the flight engineers' seniority roster.

(ii) Grievances arising out of the change from 80% of scheduled time for bidding purposes to 100% of scheduled time.

(iii) Grievances arising out of the conversion of the flight engineers' sick leave hours to sick leave days.

(iv) Grievances arising out of the agency shop and dues and assessment check-off provisions in the Flight Engineers' agreement.

(v) Grievances arising out of Flight Engineers' Retirement Plan.

(vi) Grievances arising out of the retroactive pay provisions in the instant Flight Engineer agreement.

(vii) Grievances arising out of the longevity and accredited service credits of presently furloughed flight engineers.

(viii) Grievances arising out of disciplinary, discharge and dismissal disputes.

(ix) Pending grievances based on the flight engineer agreement in effect on December 10, 1964.

(b) All other flight engineer grievances at the system board level shall be processed as follows:

(i) The President of the Flight Engineers Chapter shall submit the grievance to the President of the Allied Pilots Association.

(ii) The President of the Allied Pilots Association shall within 30 days submit such grievance to the Pilots System Board of Adjustment.

(iii) In the event that the President of the Allied Pilots Association fails to so submit the grievance, the President of the Flight Engineers Chapter may submit the grievance to the Flight Engineers System Board of Adjustment.

(iv) Should the flight engineer's grievance be denied by a 4-man Pilot board, the grievant may file a complaint with the President of the Flight Engineers Chapter alleging discrimination by the Board against him as a Flight Engineer.

(v) Should the flight engineer's grievance be denied before a 5-man board with the neutral voting to deny the grievance, the decision of the 5-man board shall be final and binding and shall not be subject to any charge of discrimination.

(c) Should the flight engineer's grievance be denied by a 5-man Pilot board with the neutral voting to sustain the grievance and one or more of the pilot members re-

versing his previous vote on the 4-man board, then the flight engineer may file a complaint with the President of the Flight Engineers Chapter alleging discrimination against him as a flight engineer.

(d) No complaint of discrimination shall be considered unless (i) it is in writing signed by the grievant and (ii) it sets forth the basis of the alleged discrimination.

(e) Where such written complaint has been filed, the President of the Flight Engineers Chapter may in his discretion file such complaint with a 7-man System Board of Adjustment, which shall consist of two flight engineer representatives, two pilot representatives, two Company representatives, and a neutral.

(f) The 7-man board shall first consider the charge that the grievant was discriminated against because he was a flight engineer, and if this charge is sustained by a majority vote of the 7-man board, the same board shall then decide the grievance on its merits by majority vote. If the charge is not sustained the decision of the 5-man Pilot board shall be final and binding.

(g) The Company shall pay for the flight pay loss of Pilot and Flight Engineer members of the 7-man System Board, the cost of the neutral, and the cost of the transcript in such proceedings.

Appendix D Annexed to Agreement

The Flight Engineers Chapter recognizes its obligation to pay the Allied Pilots Association for services rendered. The Allied Pilots Association shall forward to the President of the Flight Engineers Chapter, not oftener than once a year, a statement of what it considers to be a reasonable charge for services rendered.

(a) The President of the Flight Engineers Chapter and the President of the Allied Pilots Association shall make a good faith effort to arrive at an amicable agreement on the amount to be paid by the flight engineers to the Allied Pilots Association.

(b) In the event that the respective Presidents fail to agree on the amount to be paid, the following issue will be submitted to an arbitrator:

"What amount of money shall be paid to the Allied Pilots Association by the FEIA for services rendered?"

(c) In determining the proper and just amount, the arbitrator shall take into consideration the membership of the APA and the FEIA, the cost of negotiations to the APA, the cost of administrative and related services performed by the APA during the term of an agreement, the positions and arguments of the parties with respect thereto, and such other factors as the arbitrator may consider to be relevant. The arbitrator shall also determine the effective date for the payment of the allocated amount issuing out of his award.